

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6036 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOPALBHAI LALLUBHAI BHAVSAR

Versus

G S R T C

Appearance:

MR AD PADIVAL for Petitioner

MR HS MUNSHAW for Respondent No. 1,2 & 3

CORAM :R.K.ABICHANDANI, J

Date of decision: 23/04/96

ORAL JUDGEMENT

Rule. The learned counsel appearing for the respondents waives service of rule on behalf of the respondents. At the request of both the sides, the matter is taken up for final hearing.

The petitioner who was serving as a driver with the respondent Corporation since 25.4.1974 challenges the order of his dismissal passed on 29.9.1993 on the ground

that he had remained absent without prior permission of the Competent authority for the period from 16.7.1991 to 26.7.1991 i.e. 11 days.

The departmental inquiry was held against the petitioner on the ground that though he was posted at Bodeli depot as a driver he had remained absent without getting leave sanctioned for the said period of 11 days as a result of which administrative inconvenience was suffered by the Department. The charge proved against the petitioner is of remaining absent without permission of the competent authority for the period of 11 days and this court cannot go behind that finding. The petitioner was, however, imposed punishment of dismissal. This is, on the face of it absolutely disproportionate to the misconduct proved against the petitioner. In SARDARSINGH DEVISINGH VS. SUPERINTENDENT OF POLICE reported in 1985 G.L.H. 940 where a police constable had remained absent without obtaining leave for 150 days, it was held that the guilt established in that case could never fall in a category which would necessitate termination of service and it was a case where an opportunity to improve by visiting the employee with a lesser penalty would serve the ends of justice. It was held that the choice of imposing penalty cannot be arbitrary and it must depend on the nature of misconduct established in a given case. It was held that the ends of justice would be served if instead of terminating the services of the petitioner by an order of dismissal, he was visited with the penalty of withholding of two increments with future effect. In the present case, the absence from duty without sanction of leave is for 11 days only and the punishment of dismissal imposed on the petitioner was therefore grossly disproportionate with the said manner of misconduct. The learned counsel for the respondents could, therefore, have no objection to a lesser punishment being imposed on the petitioner and keeping in view the ratio of the decision in SARDARSING'S case (supra) it was felt that stoppage of one increment without future effect would meet the ends of justice. Under these circumstances, the impugned order of dismissal cannot be sustained because it is clearly disproportionate to the established guilt and I think the ends of justice would be met if instead of terminating the services of the petitioner under the impugned order of dismissal, he is imposed a penalty of withholding of one increment without future effect.

The next question would be whether the petitioner should be reinstated in service with back wages? In SARDARSING'S case (supra), in the last portion of the judgement which is not reported in the Law Report, it was directed that the employee concerned should be reinstated with half back wages. There is no reason for adopting a

different course even in the present case. It is therefore directed that the punishment of dismissal be substituted by punishment of withholding one increment without future effect and that the petitioner should be reinstated in service with half back wages forthwith but not later than 1.5.1996. Rule is made absolute accordingly with no order as to costs.

ooooooo